

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

**BANK OF THE WEST**

**Plaintiff,**

**vs.**

**MARTIN BROOKS and  
BRIANNA BROOKS,**

**Defendants.**

**Case No. 4:19-cv-00588-SRB**

**AFFIDAVIT OF APRIL CURTIS**

STATE OF CALIFORNIA           )  
  ) ss.  
COUNTY OF CONTRA COSTA )

April Curtis, being first duly sworn upon her oath, states the following:

1. I am over twenty-one (21) years of age; I have personal knowledge of and am competent to testify to the matters set forth in this Affidavit.

2. I am now and have been at all relevant times an officer of the Bank of the West (the "Bank"); and I am authorized to make this Affidavit.

3. I have read and reviewed the Verified Complaint filed in this Case (the "Complaint"), including the exhibits thereto, and Plaintiff's Motion for Default Judgment Pursuant to Rule 55(b) Against Defendants Martin Brooks and Brianna Brooks Under Count II of Verified Complaint and Plaintiff's Withdrawal of Relief Requested Under Count I (the "Motion") and, based on my knowledge, I believe the facts set forth in those pleadings and in this Affidavit are true and correct.

4. On March 5, 2015, Martin and Brianna Brooks ("Defendants") purchased a 2014 Regal 3200, called "Liquid Assets," Official Coast Guard No. 1259635, Serial Number RGMNC049E314, together with all masts, towers, boilers, cables, engines (specifically, but not limited to, a 2014 Volvo Penta V8 300 Sterndrive A243927 and a 2014 Volvo Penta V8 300 A243923), machinery, bowsprits, sails, rigging, auxiliary boats, anchors, chains, tackle, apparel, furniture, fittings, tools, pumps, radar and other electronic or other equipment and supplies, and all fishing and other attachments and accessories (the "Vessel").

5. Defendants purchased the Vessel from Kelly's Port of Osage Beach, Missouri, as stated in a Buyer's Order and a Retail Installment Contract and Security Agreement (the "Contract") attached to the Complaint.

6. To fund that transaction, Defendants borrowed from the Bank the principal sum of \$140,371.62 (the "Loan"), at an interest rate of 6.99% APR, to be repaid in 240 monthly payments of \$1,087.46, commencing on April 4, 2015.

7. As security for the Loan, on March 5, 2014, Defendants executed in favor of the Bank a First Preferred Ship Mortgage (the "Mortgage") pertaining to the Vessel, which was duly filed with the U.S. Coast Guard's National Vessel Documentation Center.

8. The Bank holds a valid, binding and perfected first position lien against the Vessel, as indicated and established by the Mortgage and the U.S. Coast Guard's General Index or Abstract of Title, true and correct copies of which were attached to the Complaint

9. At all relevant times, the Vessel was documented under the laws of the United States.

10. Defendants are obligors under the Contract and are personally liable for outstanding indebtedness under the Contract and the Mortgage or for any deficiency that may remain due and owing after applying the available proceeds from the sale of the Vessel.

11. Defendants defaulted under the terms of the Contract, Loan and Mortgage by failing to make required monthly installment payments.

12. Specifically, Defendants have been in default under the Loan since on or about February 4, 2019; and, despite having received a notice of default and right to cure and a subsequent demand to turn over the Vessel, Defendants failed and refused to cure their past-due obligations under the Contract, the Loan and the Mortgage and, initially, failed to surrender possession of the Vessel, which prompted the filing of this lawsuit.

13. After the Bank filed the Complaint, Defendants agreed to voluntarily relinquish possession of the Vessel to the Bank, thereby allowing the Bank to sell the Vessel through a nonjudicial sale.

14. The Vessel was repossessed on October 8, 2019; and on October 22, 2019, the Bank mailed to Defendants a document titled Notice of Our Plan to Sell Property, a true and correct copy of which is attached to this Affidavit and is incorporated by this reference.



15. With the service and assistance of National Liquidators, a nationally recognized auction company that specializes in the marketing and sale of repossessed yachts and boats, the Bank sold the Vessel on December 16, 2019 (the "Sale"), to an individual named Richard Martin of Osage Beach, Missouri.

16. The condition of the Vessel did not change from the date when the Bank had it repossessed until it was sold by National Liquidators on December 16, 2019; and from the date when the Vessel was repossessed through the date of Sale the Vessel was kept in a secured storage area.

17. At the Sale, Richard Martin purchased the Vessel for the gross amount of \$85,000.00, from which were deducted customary repossession and sale costs of \$17,444.00 for a net sale amount of \$67,556.00.

18. Thereafter, on February 11, 2020, the Bank mailed to Defendants a document titled Explanation of Deficiency and Demand for Payment, a true and correct copy of which is attached to this Affidavit of April Curtis and which is incorporated by this reference.

19. Also attached to that Explanation of Deficiency and Demand for Payment are true and correct copies of the Sale closing documents and invoice for pre-Sale services pertaining to the Vessel which the Bank received from National Liquidators.

20. The deficiency amount stated in the Explanation of Deficiency and Demand for Payment, as of February 11, 2020, was \$74,865.12, subject to the following caveat and condition:

This deficiency balance is calculated, in part, based on the expenses and credits known to the Bank as of the date of this notice. Interest continues to accrue on the amount owed. Further, the deficiency balance may increase or decrease with the application of future debits, credits, and charges, rebates, and expenses currently unknown to the Bank (including expenses related to the repossession and sale of the collateral for which the Bank has not yet been billed).

21. As stated in the Explanation of Deficiency for Payment, interest has continued to accrue at the rate of \$10.11 per day, from and after February 11, 2020.

22. In addition, Defendants are liable for attorney fees and court costs incurred from and after the date of default under the Contract and Loan.

23. Through March 6, 2020, the Bank has incurred attorney fees and court costs of \$7,688.98, which fees and costs were incurred from and after the date of Defendants' default and in connection with this lawsuit.

24. As of March 6, 2020, after giving all credits, Defendants were indebted to the Bank in the amount of \$74,865.12 (the "Outstanding Indebtedness"), as follows:

Principal	\$73,021.73
Interest	\$2,086.03
<u>Attorney fees and court costs</u>	<u>\$7,688.98</u>
Total (as of March 6, 2020)	\$82,796.74

25. Consequently, the Bank is entitled to and requests monetary damages in the total amount of \$82,796.74, plus additional interest and attorney fees accrued after March 6, 2020, as stated in detail below.

26. It is estimated that the Bank will incur an additional \$3,000.00 in attorney fees from March 6, 2020, through the date of judgment.

27. The Bank requests judgment for all such attorney fees incurred, the total of which is less than the 15% cap stated in the Contract.

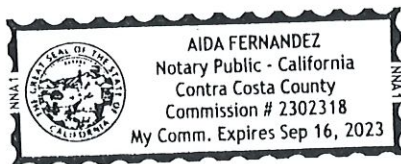
28. Further Affiant Sayeth Not.



April Curtis  
Assistant Vice President  
Bank of the West

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Subscribed and sworn to before me this 12<sup>th</sup> day of March 2020.



A Fernandez  
Notary Public  
Print Name: Aida Fernandez



**BANK OF THE WEST**  
BNP PARIBAS

**NOTICE OF OUR PLAN TO SELL PROPERTY**

TO: MARTIN E BROOKS  
BRIANNA BROOKS  
420 SE HACKAMORE DR  
LEES SUMMIT MO 64082

TO:

TO:

COLLATERAL	Year	Make	Serial Number	Contract Number	Contract Date
	2014	REGAL 3200 32	RGMNC049E314	355088283	3/5/2015
	2014	VOLVO PENTA V8 300	A243923		

Subject: Retail Installment Sales Contract dated 3/5/2015 between you and the undersigned creditor (the "agreement")

We have your collateral described above (the "Collateral") because you broke promises in the agreement. The Collateral has been repossessed or surrendered and you are hereby advised as follows:

1. We will sell the above collateral at a private sale sometime after 11/6/2019. A sale could include a lease or license. The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.
2. This Notice is dated and was mailed on October 22, 2019.
3. You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. You have the right to redeem the Collateral prior to the first to occur of (a) the disposition of the Collateral, or (b) the time Bank of the West enters into an agreement for the disposition of the Collateral. Redemption may be affected by paying (b) cash, money order or cashier's check) the Redemption amount specified in paragraph 4 of this notice, to bank of the West, at the payment address specified in paragraph 5 of this Notice (the "Payment Address"). Upon payment of such Redemption Amount, the Collateral will be returned to you at MO KAN CENTRAL RECOVERY, MO.
4. If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (800)927-2372 or write us at the address in paragraph 6 of this Notice and request a written explanation. You are entitled to an accounting of your unpaid indebtedness (the "Redemption Amount"). The Redemption Amount due as of the date of this Notice is as follows:

Itemization of Redemption Amount

Contract Balance	\$ 133,188.54
Delinquency Charge(s)	\$138.19
Collection/Repossession Costs (including amounts paid by Bank of the West to satisfy encumbrances or liens, if any)	\$7,251.00
Less Unearned Finance Charge	\$0.00
Less Insurance Refund	\$0.00

Redemption Amount Due as of the Date of this Notice\* \$140,577.73

\*This Redemption Amount due does not include any expenses that may accrue after the date of this Notice.

To learn the exact amount you must pay or more information about the Redemption Amount, call us at (800)927-2372, M-F 8am-5pm PST.

If you have a hearing or speech impairment and use Telecommunications Relay Services (TRS) or a Text Telephone, dial 711 or connect with a TRS operator or our direct TTY at 1 (800) 243-3468.

5. Your payment address is:  
BANK OF THE WEST  
CPS Monetary  
PO BOX 2634  
OMAHA, NE 68103-2634
6. If you need more information about the private sale or your debt, you can call us at (800)927-2372 or write to us at:  
Bank of the West, Consumer Finance Division NC-B15-2G-A  
P.O. Box 5172  
San Ramon, CA 94583-5172
7. We are sending this notice to the following other people who have an interest in the Collateral or who owe money under the agreement:  
N/A [Names of all other debtors and obligors, if any]



Bank of the West PO Box 2634 Omaha, Nebraska 68103-2634 (800) 927-2372





**BANK OF THE WEST**  
BNP PARIBAS

**NOTICE OF OUR PLAN TO SELL PROPERTY**

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**ATTENTION BORROWERS WHO HAVE FILED BANKRUPTCY:** We are sending you this notice because your account documents or applicable law require this notice. If the debt referenced herein is discharged in bankruptcy, this notice is not intended to be a collection attempt and you have no personal liability for the debt except as provided under the Bankruptcy Code.

**NOTICE: YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE COLLATERAL IS INSUFFICIENT TO PAY THE CONTRACT BALANCE AND ANY OTHER AMOUNTS DUE.**

Mail Certified:9414726699042151466907

BANK OF THE WEST  
CONSUMER COLLECTIONS DEPARTMENT



Bank of the West PO Box 2634 Omaha, Nebraska 68103-2634 (800) 927-2372



BK RLMO (REV. 03/02/2018)



TO: MARTIN E BROOKS  
 BRIANNA BROOKS  
 420 SE HACKAMORE DR  
 LEES SUMIT, MO 64082

**Collateral:**

Year/Make/Model: 2014 REGAL 3200 32	Serial Number: RGMNC049E314	Contract Number: 0355-088283	Contract Date: 3/5/2015
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**ATTENTION BORROWER(S):** As you have been previously informed, due to the default on the above-referenced loan contract, the vehicle securing the loan was repossessed by Bank of the West (the "Bank") and has been disposed of at public or private sale. The proceeds of the sale, after paying the Bank's costs, have been applied to your loan balance to reduce the amount that you owe. You still owe the difference. The difference is called the "deficiency." This notice sets forth how the Bank computes your deficiency balance, and makes demand upon you for payment.

**ACCOUNTING AND EXPLANATION OF DEFICIENCY:**

1. As of <u>10/22/19</u> the aggregate amount of your obligations secured by the collateral.	\$ 140,577.73
2. LESS the amount of proceeds of the disposition.	\$ 85,000.00
3. EQUALS the aggregate amount of the obligations after deducting the amount of proceeds	\$ 55,577.73
4. PLUS the aggregate amount of expenses incurred by the Bank in repossession and sale of the collateral. This amount includes expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorneys' fees which are known to the Bank and relate to the disposition.	\$ 17,444.00
5. LESS the aggregate amount of credits. This amount includes credits, including rebates of interest or credit service charges to which the Bank knows you are entitled and which are not reflected in item 1 above. Credits reflected here, if any, are of the following type(s):	\$ -
6. PLUS interest accrued from the date shown in item 1 above through the date of this notice. Interest continues to accrue.	\$ 1,843.39
7. EQUALS the total amount of your deficiency as of the date of the notice. *	\$ 74,865.12

\* This deficiency balance is calculated, in part, based on the expenses and credits known to the Bank as of the date of this notice. Interest continues to accrue on the amount owed. Further, the deficiency balance may increase or decrease with the application of future debits, credits, and charges, rebates, and expenses currently unknown to the Bank (including expenses related to the repossession and sale of the collateral for which the Bank has not yet been billed).

**DEMAND FOR PAYMENT.** You are liable for payment of the deficiency computed above, plus interest accruing at the contract rate of interest. Interest is accruing at the rate of \$10.11 per day starting the day after the date of this notice.

FAILURE TO PAY YOUR DEFICIENCY MAY SUBJECT YOU TO FURTHER COLLECTIONS ACTION, INCLUDING A LAWSUIT SEEKING A JUDGMENT AGAINST YOU. Please mail a check for the amount of the deficiency as set forth in Item 7 above plus the total accrued interest on said amount within fourteen (14) days to the following address:

Bank of the West  
 P.O. BOX 2634  
 Omaha, NE 68154

Date of Notice: February 11, 2020

If you have any questions regarding this notice, please contact us at (800) 653-0376 during our business hours of 8:00 a.m. through 4:30 p.m. Pacific Time. Monday through Friday.

# NATIONAL LIQUIDATORS

A DIVISION OF G ROBERT TONEY & ASSOCIATES, INC.

3550 88283

MO

Southeast (HQ)

2945 West State Rd. 84 Ft Lauderdale, FL 33312

Telephone: (954) 791-9601 / Toll Free: (800) 633-7172

## Vessel Closing As Of 12/16/2019

### Seller

Bank of the West  
P.O. Box 5170 NC-807-2E-K  
San Ramon CA 94583

### Buyer

Richard Martin  
4370 Osage Beach PKWY  
Osage Beach MO 65065  
H Oo

### VESSEL INFORMATION:

N.L. STOCK #: 37909

YEAR	LOA	MAKE	MODEL	HULL ID
2014	32.00'	Regal	3200	RGMNC049E314

### TRAILER:

### DEBTOR INFORMATION:

MARTINE & BRIANNA BROOKS

GROSS BID:	\$	85,000.00	
LESS NL SALES FEE:	\$	8,500.00	
LESS OPEN A/R:	\$	8,944.00	SEE ATTACHED DETAIL :

NET PROCEEDS DUE CLIENT AS OF 11/25/2019 \$ 67,556.00

*no old acct #*

Annapolis, MD \* Cleveland, OH \* Ft Lauderdale, FL \* Newport Beach, CA



# NATIONAL LIQUIDATORS

A DIVISION OF G ROBERT TONEY & ASSOCIATES INC.

Southeast (HQ)

2945 West State Rd. 84 Ft Lauderdale, FL 33312

Telephone: (954) 791-9801 / Toll Free: (800) 633-7172

## Vessel Bill Of Sale

**SELLER:** Bank of the West  
P.O. Box 5170 NC-B07-2E-K  
San Ramon CA 94583 USA

DOES HEREBY ASSIGN, SELL AND TRANSFER ALL RIGHTS, TITLE AND INTEREST IN THE BELOW LISTED ITEM.

### **VESSEL:**

ITEM: 37909 USCG: 38,915.00  
MAKE: Regal Name:  
SERIAL #: RGMNC049E314  
MODEL: 3200  
TO

**BUYER:** Richard Martin  
4370 Osage Beach PKWY  
Osage Beach MO 65065 USA

**FOR THE TOTAL SUM OF: \$ 85,000**

I FURTHER WARRANT THAT THERE ARE NO LIENS OR ATTACHMENTS OF ANY KIND AGAINST THIS VESSEL AND THAT IT IS SOLD AS IS. WHERE IS. WE FURTHER AUTHORIZE NATIONAL LIQUIDATORS TO ACT AS OUR AGENT AND ON OUR BEHALF ON THE ABOVE VESSEL.

SIGNATURE OF SELLER: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME

THIS DATE \_\_\_\_\_

HE/SHE IS PERSONALLY KNOWN TO ME OR HAS PRODUCED

\_\_\_\_\_  
AS IDENTIFICATION AND DID/DID NOT TAKE AN OATH.

\_\_\_\_\_  
SIGNATURE OF NOTARY

\_\_\_\_\_  
PRINTED/TYPED NAME OF NOTARY

\_\_\_\_\_  
COMMISSION #

\_\_\_\_\_  
EXPIRATION DATE

\_\_\_\_\_  
Annapolis, MD \* Cleveland, OH \* Ft Lauderdale, FL \* Newport Beach, CA

National Liquidators  
 5401 North Marginal Rd.  
 Cleveland, OH 44114  
 Telephone: (216) 391-1900  
 Email: Accounting@natliquidators.com



**Bill To:**

Bank of the West

P.O. Box 5170

San Ramon, CA 94583

Invoice: 37909

VIN: RGN4NC049F314

Debtor Name: MARTINE & BRIANNA  
 BROOKS

Debtor Account:

Vessel Description: 2014 Regal 3200

Date: 12/13/2019

Document No.	Trans. Date	PMT/ADJ Date	Item Description	Amount	PMT/ADJ	Balance
1012804	9/23/2019		Abstract	25.00	0.00	25.00
1012923	10/8/2019		Repo Fee - VOL	395.00	0.00	395.00
1012925	10/8/2019		Prep for Transport	576.00	0.00	576.00
1012926	10/8/2019		Lift & Load onto ML Trailer	368.00	0.00	368.00
1012927	10/8/2019		Transport to NL OH	4,370.00	0.00	4,370.00
1013020	10/16/2019		Offload & Block	192.00	0.00	192.00
1012924	11/1/2019		Pylor Marina Fees Paid to Mermaid Cove Marina	1,350.00	0.00	1,350.00
1013197	11/1/2019		Engine Check In (2 Engines)	180.00	0.00	180.00
1013276	11/8/2019		Winterize 2 Engines	220.00	0.00	220.00
1013277	11/8/2019		Winterize 2 Water Systems	180.00	0.00	180.00
1013278	11/8/2019		Winterize 2 Bilges	120.00	0.00	120.00
1013288	11/8/2019		Detail Clean & Put up Canvas	320.00	0.00	320.00
1013289	11/8/2019		Acid Wash Stained Bottom	200.00	0.00	200.00
1013583	12/13/2019		Shrink Wrap	448.00	0.00	448.00
TOTAL:						8,944.00